

## Sentencing Statement of Roger Thomas Clark to the Court

### Introduction

I was in custody in Bangkok Remand Prison (BRP) for thirty and one-half months, from December 3, 2015, to June 14, 2018, awaiting extradition. During my 925 days of incarceration at BRP I was subject to inhumane and degrading conditions of confinement, and the deprivations I suffered were sufficiently serious that I was denied the minimal civilized measure of life's necessities. Then conditions of confinement were so atrocious that on American soil they would have constituted constitutional deprivations based on the following:

- (1) Overcrowding
- (2) Lack of Beds or Mats and Bedding
- (3) Insufficient Ventilation
- (4) Sexual Violence
- (5) Mingling of Inmates With Serious Infectious Maladies
- (6) Deprivation of Sleep
- (7) Unusable and Unsanitary Toilet Facilities
- (8) Insufficient Potable Water and Sanitation Facilities
- (9) Lack of Basic Toiletries
- (10) Infestations Throughout the Sub-prison
- (11) Inadequate Nutrition
- (12) Inadequate Medical Care
- (13) Exploitive Labor
- (14) Crime and Intimidation
- (15) Interference With Access to Legal Counsel, Legal and Personal Correspondence, and News

### (1) Overcrowding

BRP is divided into eight separate wings or buildings, located along a 1/2 mile road within the prison complex. Each wing is operated as an individual sub-prison, with its own manager, correctional officers staffing, budget and rules. A single warden and "central control office" oversees the entire eight sub-prison complex. Within a sub-prison, the Building Manager is in charge, he rules as a god within his fiefdom, and distributes the profits from the factories amongst the ten or so other correctional officers that work in the sub-prison. I was held in sub-prison 8 for much of my time at BRP. Sub-prison 8 is the largest by a factor of two, and contains the kitchen facilities that feed all eight sub-prisons and the infirmary. As well it contains a wood-working factory, a shoe factory, and the main floor of the dormitory building is a 16,000 square foot open-air paper bag assembly factory. The second floor of the dormitory building is split between prisoner canteen facilities, and shoe making facilities.

The cells in sub-prison 8 of the BRP are rooms of "about 24 square meters."<sup>1</sup> FIDH Report at 5. The rooms used to have linoleum, but that was removed in late 2015, and the floors were painted. Along one wall is a platform roughly constructed of plywood, that is raised about 2 feet off the floor, is 6 feet wide and stretches the length of the room, and men sleep on and under the shelf. Two external walls consist of bars, with concrete walls dividers between cells. During my time living in sub-prison 8, there were about 75-85 men living in cell 10. Counts were made in the room in the evenings after we were locked in, and again in the mornings before we were unlocked. Many times the count was up to 85, and it never dropped below 75. Eighty men was the average usual head count. Line ups to go to the cells was at 2:00 p.m., and the cells not unlocked until 6:30 a.m. Prisoners went to the cells barefoot, wearing only shorts and t-shirts. No food or water was allowed.

With 80 men in the room, that allowed 0.3 square meters (slightly over 3 square feet) per man. The International Committee of the Red Cross ("ICRC") puts "the minimum space for accommodation over ten times that - 3.4 square meters per person in shared or dormitory accommodations." ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons, Supplementary Guidance*, April 2012, 32-33. <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4083.pdf>.

In its report on conditions in Thai prisons during 2016, the International Federal for Human Rights ("FIDH")<sup>2</sup> noted that the minimum space currently mandated by the Thai Department of Corrections is 1.2 square meters for men. February 2017 FIDH Report - *BEHIND THE WALLS - A look at conditions in Thailand's prisons after the coup*, February, 2017 at 20. <https://www.refworld.org/pdfid/58b593dd4.pdf>. ("FIDH Report"). The amount of space in cell ten at BRP is only 35% of that amount.

In assessing conditions in Thai prisons during 2016, FIDH reported "that overcrowding remained the most pressing issue in Thai prisons." As FIDH stated, "The United Nations (UN) Human Rights Committee (CCPR), the UN committee Against Torture (CAT), and the UN Committee on Economic, Social and Cultural Rights (CESCR) have all expressed ongoing concern over the rights of prisoners and prison conditions in Thailand." *Id.* at 9.

The United Nations Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment report on Thailand ("UNCAT") noted in a 2014 report that it was "concerned at the extremely high levels of overcrowding and harsh conditions prevailing in detention facilities" in Thailand. UN Committee Against Torture (CAT) - *Concluding observations on the initial report on Thailand*, 20 June 2014. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsk2oy72JlefPnicA9mLXtq%2B9%2F5hbXwg%2B5JWNDr0RdTusMRgzu6yegqVTu8QgwbPcc9dlir1Tfe5g9kMOTJykFvZmYIG7TVsYdYcm2OgOMRJK> ("UNCAT report").

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<sup>1</sup>This converts to approximately 258 square feet.

<sup>2</sup>FIDH is an international human rights NGO.

As a result of the cramped conditions, inmates at "BRP are forced to sleep on their sides due to the insufficient space, and in order to avoid conflicts with other inmates. Former inmates at [BRP] reported experiencing leg and back pain because they could not move while sleeping," and "[f]ormer prisoners at the BRP reported that prisoners had to lay their legs on one another because of the crowded sleeping areas." FIDH Report at 20.

They say a picture is worth a thousand words, and that is never more true than now. The picture attached to my sentencing memorandum as Exhibit B is a graphic example of a cell that appears to be identical to my cell - cell 10 in in sub-prison 8 at the BRP – and it appears to have about 75 men in the room. The picture is a screen capture from a hacked security camera in a Thai prison. Many international rights organization reported that these conditions existed in prison in Thailand while I was incarcerated there.

Former prisoners from "BRP revealed that there are dormitories with better conditions reserved for prisoners with good behavior and for the purpose of receiving visits from UN, European Union (EU), or National Human Rights Commission of Thailand officials. These dormitories are cleaner and larger than the dormitories where most prisoners sleep." FIDH report at 21. At the BRP, the "nice" dormitories were in sub-prison 1, and westerners were offered places there for 40,000 baht (approximately US \$1,250) per month. I spent my first few weeks in December, 2015 in sub-prison 1, and there were 18 to 20 men per cell. Sleeping mats, pillows and blankets, which were forbidden in the other sub-prisons, were allowed and available for purchase. I was moved out around Christmas time when it was clear I couldn't pay the bribes required to stay.

## (2) Lack of Beds or Mats and Bedding

Courts in this Circuit have recognized "that the condition of a prisoner's mattress may be so inadequate as to constitute an unconstitutional deprivation." *Walker v. Schult*, 717 F.3d 119, 127 (2d Cir 2013)(discussing *Bell v. Luna*, 856 F. Supp. 2d 388, 397-98 (D. Conn. 2012), where the court denied a motion to dismiss because the inmate lived with a torn, unstuffed, and mildewed mattress for seven months).

Rule 21 of the UN Standard Minimum Rules on the Treatment of Prisoners states, "Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness."

"FIDH and UCL's research shows a trend of increased restrictions in the [Central Women's Correctional Institution] and the BRP since the 22 May 2014 military coup. According to former inmates from both prisons, officials confiscated their mattresses, pillows, and blankets and replaced these items with three thin sackcloth blankets. Most inmates would lay one of the blankets down on the floor in place of a mattress. One former prisoner said, "Before the coup, I bought sleeping stuffs from the prison shop, so I had seven to eight blankets. But in late 2015, the officers took my sleeping mats, pillow and blankets and burned them, then gave us three blankets [each]." FIDH Report at 24.

When I first arrived at sub-prison 8, I was issued 2 sackcloth blankets, which were really more like the thickness of sheets, and measured about 3ft x 6ft. In mid-2016 the military toured the prison, and declared that we didn't need the blankets. The officers seized them all and burned them. After that, we slept on the concrete floor wearing shorts and a t-shirt, and nothing more. Some of the gang leaders--who slept on the raised plywood shelves, because they were more comfortable than the floor, would bribe the guards to let them bring in a blanket, but personally I never saw the purpose as they were too thin to offer even a modicum of comfort.

The attached screenshot from a hacked Thai prison security camera shows a scene that is pretty much identical to Cell 10 when I was incarcerated there. Exhibit B to sentencing submission.

I have permanent problems with my left leg from lying on the concrete floor for 16 hours a day, on my side, for over 2 1/2 years. It is either a nerve or circulation problem, or possibly both. medical staff here is stymied. Now I cannot lay on my left side, back or stomach without my left thigh going numb, with a feeling of excruciating fire in my left leg. The medical staff at MDC has been aware of the problem since my arrival, but has not determined the cause, in spite of finally getting tests and x-rays earlier this year. I am told that better diagnostic methods, i.e. CAT scan or MRI, will likely be available when I get to my "spot". Medical staff at MDC are borderline competent, and I don't expect anything more of them before I leave here. Currently I also have neck and shoulder problems from only laying on my right side, which is painful, but the only possible sleeping position I have left. It doesn't help that MDC prohibits pillows, and I'm told that I cannot get a pass for one.

### (3) Insufficient Ventilation

According to the ICRC, "no more than 40-50 persons should be accommodated in a room where inmates sleep and then only when the available space, ventilation, and lighting meet the ICRC's recommended specifications." ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons, Supplemental Guidance*, 2005, 25-26.

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4083.pdf>.

"Inmates cannot see the external environment from their dormitories . . . Iron bars are used to separate the dormitories at both [the CWCI and BRP] prisons. The former prisoners reported that there was an insufficient number of fans." 2017 FIDH Report, 21.

There was no airflow through the cells, and the fans merely served to move the fetid air around. The average daily high in Bangkok during my incarceration was 91 degrees, with an average relative humidity of 86%. See Bangkok Temperature, Relative Humidity and Rainfall data, attached as Exhibit C. The heat, humidity and stale air was absolutely debilitating. The thick concrete of the building would soak up heat from the sun during the day, and the temperature in the cells would continue to rise during the evening as the heat radiated out from the concrete, often bringing the temperature up to close to 100 degrees. Of course the filthy toilet facilities added to the miasma, with the smell often causing nausea.

(4) Sexual Violence

The United Nations Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment report on Thailand stated that "[r]eports before the Committee indicate incidents of continuing violence in detention, including sexual violence in detention, including sexual violence by prison guards or other prisoners with the acquiescence of the authorities." UNCAT Report.

Sexual assaults, rapes, and violence were a continuing problem at sub-prison 8 of the BRP, particularly in the cells. Locked in from line up to cells at 2:00 p.m., until 6:30 a.m., sadistic alpha males in the cell took constant advantage of the zeta males.

Weaker prisoners were stripped naked and beaten, sometimes for hours. Sometimes the aggressors would play soccer with their victims, splitting into two teams, and kicking their victim towards the wall at the opponents end of the room, up a narrow aisle up the middle of the cell. The people who would normally lay there stood to the side and cheered them on. If the victim was kicked towards the sides, the prisoners lying there would kick him back towards the center of the room. It was positively brutal.

Sexual assaults were pervasive, with the victims being raped or forced to perform fellatio, or often both at the same time by two attackers. There were numerous attacks every night, up to five or six over a period of several hours. I witnessed literally several thousand attacks of sexual violence during my time at the BRP.

When I arrived in America on June 15, 2018, and was incarcerated at the MDC, I was plagued by nightmares and memories of the assaults I had witnessed in the Thai prison. Often I could only get 1 or 2 hours of broken sleep a night. My not-so-tough to figure out self-diagnosis was PTSD. Stress after traumatic events seemed about right, but I remained leery for months of the stigma involved with asking for help. There are no secrets at MDC.

Then, by the beginning of December 2018, I had been unable to sleep for 10 days, and I was experiencing a pounding head, poor vision and balance, and auditory hallucinations all consistent with a terminal lack of sleep. I finally contacted the psychology department at MDC who very unhelpfully suggested that I write down what was bothering me when I went to bed each night, to try and identify the problem. Identifying the problem was not the issue, it was the memory of the brutal sexual assaults, and the nightmares that resulted that was the problem. The psychologist having proved to be more than useless, I lobbied to see someone from psychiatric services.

Finally around December 15, 2018, I had a visit with the prisons part-time psychiatrist. I sat in his office for 20 minutes with him barely asking me a question, after I first explained my problem. The visit concluded with him prescribing me a cocktail of "psych meds" that he assured me would allow me to sleep. For almost two years, it has been effective, with two dosage adjustments. I

still have problems falling asleep many nights because the memories still haunt me, but when I do fall asleep I sleep like a log, not waking up until morning. The psych meds leave me slow to wake up and dozy for a while in the mornings, but that has the advantage that I never remember my dreams, nor my nightmares.

It is unlikely that I will ever get over the mental damages that I suffered at the BRP, but at least now I am able to live with them.

(5) Mingling of Inmates With Serious Infectious Maladies

"Many inmates at the . . . BRP suffer from diseases and infections that easily spread among inmates due to the overcrowding and shortage of healthcare staff." FIDH Report at 25.

"While sick prisoners are supposed to be kept separate from other prisoners, this is difficult to implement in practice due to overcrowding." *Ibid.*

"Diseases that inmates commonly contract in the prison include skin diseases, such as scabies and abscesses, and tuberculosis." *Ibid.*

In mid-2016 the prison tried to identify all the inmates in all 8 sub-prisons who had active tuberculosis. They then transferred over 150 men to sub-prison 8, in order to keep the tuberculosis "problem" in one place. They moved about 100 men out to balance the influx, and my cell number 10 received 11 of the active TB patients. Most of the patients were AIDS victims, uneducated and illiterate. Bags containing several varieties of pills would be issued to them, along with printed instructions on the complex regimen they were supposed to follow for the month. Most patients traded the pills for food; among the inmates there, any pills besides the paracetamol that the infirmary issued for any problems, was considered "special," and they would trade for them with no regard for what type they were, or what they were for.

In the Spring of 2017, prison officials brought in portable x-ray machines and forced all inmates to have x-rays, as TB was running out of control in the institution. By the spring of 2018 it was even worse, and once again the x-ray trucks were brought in. Even more patients were identified, and then the same process with meds that were never properly taken was repeated. About a week before I left the prison I was taken to a hospital to have an x-ray for TB. The day I left the prison on the way out I was taken to a hospital for yet another x-ray to confirm I didn't have TB.

During my stay at BRP I was inflicted with numerous intestinal parasites, scabies, pinworm, ringworm and several other types of fungal infections, and countless insect bites. I currently still suffer from an aggressive skin fungal infection that ebbs and flows, but even oral anti-fungal drugs, which require weekly liver testing while dosing with them, could not completely get rid of it after 3 months of treatment. I also have an unrelated but equally debilitating rash that also comes and goes, and often I'll wake scratching drawing blood and scarring myself. Unfortunately the treatment for the rash leaves my skin more susceptible to the fungal infection, so it's been a vicious circle for 2 1/2 years at MDC, with currently no end in sight.

(6) Deprivation of Sleep

"[L]ights at the CWCI and the BRP affect prisoners sleep." 2017 FIDH Report, 21. In 2016 fluorescent lights were replaced by identically mounted LED lights, which featured 2 rows of LED lights in a fixture that was a plug-in replacement for fluorescent bulbs, and that according to the packaging were "40% brighter than fluorescents." Cell 10 had 4 banks of the extremely bright lights. "The lights are kept on all night, to prevent the prisoners from escaping or breaking the rules." Ibid.

The ICRC states that "artificial lighting should not be kept on 24 hours a day in areas where detainees sleep" and "should not be so powerful that it disturbs the sleep of prisoners." ICRC, Supplementary Guidance, 2012, 20, 37.

The poor ventilation and foul air from the toilet area, sights of sexual violence, and fights and arguments that break out over the stupendously overcrowded conditions when a sleeper rolls over even a little bit, all contribute to an environment that is in no way conducive to sleep. Of course being forced to lay on ones side on a cold concrete floor makes sleep difficult if not almost impossible as well.

Sleep is critical to human existence, and conditions that prevent sleep have been held to violate the Eighth Amendment. *See Tafari v. McCarthy*, 714 F. Supp. 2d, 317, 367 (N.D.N.Y. 2010)("Courts have previously recognized that sleep constitutes a basic human need and conditions that prevent sleep violate an inmate's constitutional rights.")(citing *Harper v. Showers*, 174 F.3d 716, 720 (5th Cir. 1999)).

7) Unusable and Unsanitary Toilet Facilities

In 1972 the Second Circuit noted that "[w]hat is most offensive to this Court was the use of the 'Chinese toilet'. Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing to be permitted." *LaReau v. MacDougall*, 473 F.2d 974, 978 (2d Cir. 1972). The *LaReau* court had previously described a 'Chinese toilet' as a facility for disposing of human waste that "was merely a hole in the floor in the corner of the cell covered with a grate." *Id.* at 977. This was the type of toilet that was in the my cell, cell 10, in BRP.

"The toilets at the CWCI and the BRP lack privacy and are too few in numbers." 2017 FIDH Report, 22. I experienced this.

Outside the main building for use during the day, there were 16 squat toilets available for 1,200 men. They had a barrier about 24" high between each toilet, but had no door on the front, and offered absolutely no privacy. The open wall of the 16,000 square foot paper factory on the main floor of the building faced the toilets.

The ICRC recommends "no less than one toilet per 25 detainees" and that "prisoners using toilets should not be in full view of other detainee" ICRC, Supplementary Guidance, 38, 53. The toilets at BRP had one cistern in front of two toilets to hold water for cleaning oneself after defecating. The cisterns were filled at the beginning of the day using buckets dipping water from 2 locked tanks in front of the toilets. This water would usually run out by 8:00 a.m. or so. For the rest of the day, members of the "Food Mafia" would hang around the toilet area with buckets of water. For 1 baht (about US\$0.03) to 4 baht you could fill up a bottle with water to use for cleaning yourself. The Food Mafia would write each time down in a book, and collect from everyone once a week (See more information on the "Food Mafia" at heading 14 *ante*).

Unlike sub-prisons 1 through 7, sub-prison 8 was built a decade later, and to a completely different design. The cells were evenly split between having either one squat toilet in a corner, or having only a 4" hole in the floor for toilet facilities. Cell 10 that I was in had only a hole in the floor. There was no privacy whatsoever, and prisoners were in full view of each other throughout the cell. There was a hose pipe that had about an 8" hose dangling from it, that was for rinse water to wash excrement down the drain and for personal cleaning. There was no toilet paper, nor bowl to hold water. After defecating, one had to scoop water from the pipe with the left hand to clean oneself. We were not allowed to bring any bottled water into the cells. Shorts (no underwear allowed) and a t-shirt were the only two items that were permitted, enforced by strip searches every day before entering the cells.

Because of the ongoing drought in Thailand, and in fact in large swaths of SE Asia, the water was shut off at 6:00 p.m. every night, so there was no water for cleaning or flushing waste away. One does not truly know the meaning of despondent until they are crouched over a 4" hole in the floor suffering explosive diarrhea from dysentery, with no water to clean oneself or the floor. Many people became nauseous at the mess which stank indescribably in the heat, and would get sick, causing others to also vomit as a result. Dysentery was common due to poor water sanitation facilities, and everyone suffered from it at least several times a month. The area around the toilet became a cesspool of urine, excrement, and vomit on most nights. Prisoners who were unable to clean themselves had to stand against an outside wall for the rest of the night, so as not to spread the mess throughout the rest of the cell.

To make matters worse, when it rained, the sewage hole in the floor invariably backed up. Even the smallest amount of rain in Bangkok tends to fall in an extremely short period of time, so it would be only minutes after a deluge started that the drains would start to spew sewage into the cell. Prisoners would take off their clothes to try and dam the area around the drain if the rain wasn't too heavy. In heavier rains prisoners were forced to choose between standing or sitting down in foul sewage water remnants until we were released at 6:30 a.m., and rushed to the shower area to clean up before breakfast.

The Second Circuit has long recognized that unsanitary conditions can, in egregious circumstances, rise to the level of cruel and unusual punishment. *See Lareau v. Manson*, 651 F.2d 96, 106 (2d Cir. 1981)(noting that prisoners are entitled to, *inter alia*, sanitation).

(8) Insufficient Potable Water and Sanitation Facilities

"Research indicates that poor living conditions, including inadequate access to medical treatment, food and potable water, and poor sanitation facilities continue to plague [CWCI and BRP prisons]. These conditions fail to meet international standards." 2017 FIDH Report, 18.

"Inmates at CWCI and the BRP do not have an adequate supply of water for personal hygiene." *Id.* at 22.

The washing/showering area was open from 6:30 a.m. to 8:00 a.m. In that time, 1200 men attempted to clean themselves. In the morning, there were 2 tanks (1 meter x 8 meters, and 1 meter deep) that prisoners crowded around and dipped in their bowls to wash and rinse. The tanks would be empty by 7:00 am "Prisoners at the BRP shower using the bowl washing system in the morning and the pipe [shower spray] system in the evening." *Ibid.* In the afternoons, the showers would open at 1:30 for 30 minutes, for 1200 men. "The BRP's shower area has one water tank [pumped to the showers] to which prisoners will rush to have enough water to shower . . . [o]ne prisoner from the BRP described the situation at the showers at the BRP 'If you don't fight, you won't get a space in the shower before the water runs out'." *Ibid.*

Washing twice a day is critical in the climate in Bangkok. During my 925 days in the BRP, the \*average\* daily high temperature was 91 degrees, and the \*average\* daily relative humidity was 86%. (When asked about the conditions in a Thai prison, my short response is "Like hell, only a lot more humid.") See temperature, relative humidity and rainfall data, Exhibit C to sentencing memorandum. The cells were hot, filthy and disgusting, so washing first thing after being unlocked, and changing to clean clothes, was critical before eating. Unwashed persons in dirty clothes were not allowed into the canteen. In the afternoons, we'd be soaked with sweat and desperate for a shower by 1:30pm when the showers opened for 30 minutes. At 2:00pm, we'd line up to go to our rooms.

Rule 16 of the UN Standard Minimum Rules for the Treatment of Prisoners states, in part, "Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suited to the climate, as frequently as necessary for general hygiene."

"Inmates do not have an adequate supply of drinking water due to the prison's poor water supply capacity." *Id.* at 24. "[S]ome [sub-prisons] have poor quality water filtration systems. As a result, some prisoners drink water that is not filtered at all." *Ibid.* The drinking water was putrid, and I'd suffer dysentery 4 or 5 times a month, as would basically all the prisoners. "Former inmates from the BRP said that each [sub-prison] had two water dispensers that inmates could use to fill up their bottles. However, sometimes the machine did not work and they would have to buy water from the prison [commissary]" *Ibid.*

The UN Standard Minimum Rules for the Treatment of Prisoners state, "drinking water shall be available to every prisoner when he or she needs it."

At night, from 2:00pm line ups to cells, until 6:30am unlocking, prisoners were not allowed to have any food or bottled water in the rooms. Barefoot, with shorts and a t-shirt was all we were allowed in the rooms. Due to the ongoing drought conditions prevalent for several years throughout Thailand, water for flushing excrement waste down the hole in the floor that served as a toilet, was shut off every night at 6:00pm. No water at all was available for over 12 hours every day.

#### (9) Lack of Basic Toiletries

It is clear that prisoners have a constitutional right to sanitary living conditions and the necessary materials to maintain adequate personal hygiene. "[T]he failure to provide prisoners with toiletries and other hygienic materials may rise to the level of a constitutional violation." *Walker*, 717 F.3d at 127 (citing cases).

Prisoners at BRP were not provided with basic toiletries such as soap, shampoo, toothbrushes, toothpaste, tissues or toilet paper, razors, combs, nail clippers, laundry soap, or access to a mirror. During my first eight months or so at BRP I had no visitors, who would have been able to purchase my requirements at the visitors store, and so I had no toiletries or shoes. The prison did not supply anything, including toiletries, laundry soap, or even clothing. On my first night there officers cut my trousers down to the size of shorts, and removed most the sleeves from my dress shirt, and confiscated my underwear, socks and shoes. I had to do without everything except a toothbrush that a prisoner who was leaving donated to me. Note that these items were not available in the sub-prison's commissary store, only a visitor could purchase them for prisoners.

#### (10) Infestations Throughout the Sub-prison

Vermin infestations were prevalent throughout the facility. Dozens of semi-feral cats roam the outdoor areas to help keep down the rodent population, but they were not allowed above the open air ground floor of the main building.

Sub-prison 8 had a massive outdoor kitchen that fed all 8 sub-prisons and the infirmary. No cats were allowed in the kitchen area, and it was infested with rats, mice, cockroaches and flies.

The eight sub-prisons went through literally tons of rice a day. The ground floor of the main building was used to store the rice, and it always had several dozen stacks of rice, stacked in 50-kilogram burlap type bags 3 x 6 x 20 high (the main floor was about 18' high) leaving a mice, rat and insect "highway" between the bags. Cats would camp out and toilet on the top of the stacks--there was no ground that wasn't concreted over for them to bury their spoor. As bags were removed from the top of the stacks for use to feed the prisoners, the bags would be covered in excrement and stained yellow from the urine that leaked inside. Repeated requests for tarps to cover the stacks were denied. The staff seemed to find it humorous that "Cats shit and piss all

over your food." Undoubtedly boiling the rice for 30 minutes killed any microbes, but that didn't change the fact that the food was too unappetizing to eat as a result.

The dormitory cells were absolutely overrun with rats, mice, flies, ants, very large centipedes and spiders, and other insects. The toilet hole in the floor and the hole in the wall where the exposed hosepipe came in were veritable hives of vermin activity. Insect and rodent bites were nightly occurrences for all inmates.

Unfortunately, the semi-feral cats were not allowed in the canteen where the food was served. Food was placed on the tables before the prisoners were let in all at once, and the rodents and insects got the first dibs on the food. While eating you would have to constantly shoo away flies and cockroaches from your food, and rodents scampered merrily about snatching scraps from under the tables.

When challenged prison conditions include exposure to unsanitary conditions, the Second Circuit is unwilling "to set a minimum duration and minimum severity of an exposure for it to reach the level of a constitutional violation." *Willey v. Kirkpatrick*, 801 F.3d 51, 68 (2d Cir. 2015). There is neither "any bright-line durational requirement for a viable unsanitary conditions claim. Nor is there some minimal level of grotesquerie required . . ." *Id.* Whatever the line, the conditions are BRP clearly fell below it.

#### (11) Inadequate Nutrition

Meal times at sub-prison 8 at the BRP were at 7:30 a.m. and 11:00 a.m. There used to be a dinner meal at 2:00 pm, with prisoners lining up to go to their cells at 3:00 p.m., but that changed a couple of months after I arrived. The final meal was no longer served (though if you visit there, signs on the canteen proudly announce a meal at 4:00 p.m., a couple of hours after prisoners are locked up tight for the day) and the line up to go to the cells was moved to 2:00 p.m.

"The former prisoners from the CWCI and the BRP described the prison food as tasteless and lacking in nutritional value . . . a former inmate from the BRP said that he lost weight in prison because he could not eat the prison food and stayed hungry at night." 2017 RIDH Report, 23.

The food provisions were nutritionally inadequate, and the water was not always potable. Breakfast usually consisted of a "soup" with one fish-ball per prisoner. The soup was served in bowls that were shared between four prisoners, who would all dip their spoons into the same bowl while eating. Each prisoner would have his own plate of rice, which was often unpalatable. The food was placed on the tables starting long before the prisoners were let in to eat, so cockroaches, flies, mice and rats got their fill first. Lunch usually consisted of fish-head soup--which is exactly what it sounds like--and more rice. That was the extent of the food available daily from the prison.

Lack of water and dehydration was a problem every evening. Prisoners were allowed no food or even bottled water in the rooms from line up for rooms at 2:00 p.m. until unlocking at 6:30 a.m.

Even if one was so desperate to drink from the toilet hosepipe, it was shut off at 6:00 p.m. due to drought conditions in the country. See attached news reports from 2016 and 2018 concerning drought conditions in Thailand and SE Asia in general, see Exhibit D and E to sentencing memorandum.

"Former prisoners from the BRP confirmed that prisoners who could afford to buy other food would order it from the [visitors] prison shop or [have visitors order from] food shops outside the prison." *Ibid*. A prisoner needed to have visitors pay for outside food, or food from the visitor-only "prisoners welfare shop", where only a visitor could order and pay for food, to be delivered the next day to the sub-prison. A prisoner with money on his account but no visitors was out of luck.

I was 180 pounds when I arrived at BRP on December 3, 2015, and my weight had dropped to 93 pounds when I left on June 14, 2018, 924 days later. My current weight on November 5, 2020 is 155 lbs.

#### (12) Inadequate Medical Care

I had abscesses on the sides of my hips and buttocks from lying on the concrete floor. Given the absence of medical care, other prisoners "treated" me for this condition with a flame sterilized needle that punctured and drained them. The same treatment was used the five or six times I was afflicted with scabies. My rash was treated by saving up my own urine and applying it to the affected area. To deal with the ringworm I contracted at the prison, I used tobacco and spit poultices. Trips to the infirmary invariable ended up with returning with a useless strip of 10 paracetamol. The excruciating pains in my leg from sleeping on the concrete floor were ignored by the medical staff, and I was advised to have it attended to when I arrived in America. That hasn't worked out too well either, so far.

I am not the only person who found these conditions while in prison in Thailand. The United Nations Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment report on Thailand reported that prison "conditions include insufficient ventilation . . . poor sanitation and hygiene facilities and inadequate access to health care." UNCAT Report.

"Inadequate access to medical treatment, insufficient food and potable water, and poor sanitation facilities continue to plague [the CWCI and BRP] prisons examined in this report." FIDH Report at 4.

The International Federation for Human Rights stated the following in its 2017 report on this question: "The CWCI and the BRP lack an adequate staff of healthcare workers and their services are very difficult to access as a result." *Id.* at 24. "The doctor and nurses usually prescribe paracetamol [a not-very-powerful over the counter analgesic as common in Europe and SE Asia as aspirin] to treat most ailments. One former prisoner from the BRP said, 'They [the doctor] will sit far away from us like they are disgusted by us. They will shout to ask what the matter is and give us paracetamol'." *Ibid*.

"As a result of poor medical care, many inmates preferred to take care of themselves. One former prisoner at the CWCI recounted, 'My eye was infected and I chose to rinse my eye with my urine because I wouldn't get eye drops from them anyway.' Another former prisoner at the CWCI said, 'The first thing I was told when I got there [to the CWCI] was that I must not get sick because if I got sick, I'd be better off dead'." *Ibid*.

"Former prisoners from the BRP described the healthcare services as 'horrible.' One of them recounted, 'Lots of people have abscesses and the treatment is not to see a doctor but to use a singed needle and pierce the wound and core it out. The blood will flow out of the wound, and then we cover the wound with tobacco. We cannot wait for the healthcare services because it takes too long. If there is anything we can do, we'll do it on our own'." *Ibid*.

"At the . . . BRP, access to emergency medical care at night, weekends, and public holidays is either not provided or extremely limited. in some cases, the only available emergency medical is provided by designated prisoner volunteers'." *Id* at 25.

### (13) Exploitive Labor

Thailand's Constitution of 2017, Section 30, states: "Forced labour shall not be imposed, except by virtue of a provision of law enacted for the purpose of averting public calamity, or when a state of emergency or martial law is declared, or during the time when the country is in a state of war or armed conflict." However, this provision of the Constitution was not honored. "Prisoners are often subjected to exploitive labor practices characterized by harsh working conditions and insufficient remuneration." 2017 FIDH Report, 4.

"[T]he National Human Rights Commission of Thailand (NHRCT) and the Ombudsman [are] recognized as the sole authorities able to conduct prison visits." *Id*. at 17. However, "members of the NHRCT have reported difficulty visiting certain prisoners or prisons despite their official capacity." *Id*. at 18.

"Working conditions at the CWCI and the BRP are harsh and the remuneration is insufficient" and "[p]risoners work seven days a week . . . from 8am to 2pm . . . at the BRP." *Id*. at 25. In sub-prison 8, workers finished at 1:30pm, to allow them a chance to shower before going to the cells at 2:00 p.m.

It was my experience at sub-prison 8 that no workers received any pay for their work. The guards promoted the fiction that all pay was banked to be paid on the day that a prisoner was released. Prisoners who had contact with released inmates said that no payments were ever forthcoming.

When dealing with complaints about no pay, the building manager of sub-prison 8 said that the pay all went towards the cost of feeding the inmates.

The job I was assigned was on the main floor of the dormitory building, folding and gluing together bags. I was never remunerated for my work. The prisoners who worked as factory bosses were leery of meting out punishment to white foreigner, and unlike most other prisoners I was never beaten when I didn't make my quota.

Stitching together women's shoes was the biggest industry in sub-prison 8. Workers would have to stitch together 40 to 60 pairs of shoes a day, depending on the complexity of the shoe and their experience. Consequences were particularly brutal for missing quotas there, as the shoe factory was the guards' biggest earner. I personally saw Laos and Cambodian children as young as 9 years old, who were imprisoned without their parents, stitching together "Bata" branded "Comfit" model open-toed shoes, that were proudly labeled "Made in Thailand."

Supposedly the prison complex kept no prisoners younger than 14, and under those under 18 were to be kept in sub-prison 2, but many Laos and Cambodian children came through sub-prison 8 and worked making shoes. Unscrupulous contractors would hire Cambodian and Laos workers for construction jobs, and when the job was complete, instead of paying off the workers, they'd call immigration to raid the camp. Often children would be swept up without their parents. Adults, and children 9 and older, without even going to court were sent directly to the prison en mass to work in the factories for 90 days--never charged with anything--and then deported. This in spite of the fact that there were supposed to be separate Immigration Detention Facilities, with no factory work, that they should have been sent to. The children were housed in cell 16, with the 50 or so "lady-boys" (men with breasts and other female attributes, usually sex workers imprisoned for robbery and assault of clients) who "mothered" them and fortunately protected them from sexual predators.

#### 14) Crime and Intimidation

"While procedures for making complaints exist, prisoners are afraid to lodge complaints out of fear of retaliation at the hands of prison officials." FIDH Report at 4.

The prison official didn't want to hear anything that made the prison look bad, and the "Food Mafia" split their profits with the prison guards, so they were untouchable.

The Food Mafia pretty much ran sub-prison 8. There were 10 prison staff, including the sub-prison manager, to supervise all operations 24 hours a day, 7 days a week, including the kitchen serving the entire 8 sub-prison complex and the infirmary, and the paper bag, shoe, and wood-working factories. Except for line-up to cells at 2:00 p.m. and unlocking at 6:30 a.m., unless you sought them out at their desks in their offices, it was perfectly possible to go days, even weeks, without seeing any prison staff during the day.

The name "Food Mafia" comes about as the largest and most profitable venture the gang engaged in was reselling food from the commissary and the visitors' store at a 25% to 50% markup. Only their agents could make purchases at the commissary food store, and an agent would pay 3,500 baht (about US\$110.00) a month for the right. If you didn't write out your

commissary order through a Food Mafia agent, the commissary (which was staffed exclusively by Food Mafia agents, of course) would ignore the order.

An inmate could purchase items available from the visitors' store for a 50% markup, for items otherwise unavailable to prisoners who did not have visitors. Commissary store items were sold at a 25% markup. Debts for purchases would be written down, and had to be paid within a week. If you were unable to pay, 15% per week, compounded weekly was added on, and it was rolled over to the next week. Payment was made by giving the gang the required amount in milk - 250 ml boxes that were 10 baht (about US \$0.30) each and were sold 30 to a case. The Food Mafia would give the cases of milk to the guards, who would then "sell" them back to the store, keeping a percentage, and using the proceeds to credit the Food Mafia purchases.

The Food Mafia also sold water for cleaning yourself of excrement after using the outdoor toilets after 8:00 a.m., when the cisterns in front of the toilets were empty. They would charge 1 baht (about US\$0.03) per 500ml bottle, or 4 baht per 2 liter bottle of water. They would sell dozens of 5 gallon pails of water per hour. Once again, usurious payment terms applied: They would write your name down in their collection books, and roll it over with a 15% surcharge if you were unable to pay off some or all of your bill.

At meal times there would be dozens of Food Mafia all over the sub-prison, with blankets laid out with bags of food and other items spread out for sale. The prison looked like a bazaar from 10:00 a.m. to 1:00 p.m.

Additionally, the Food Mafia ran all the gambling, as well as the prostituting out of the "ladyboy" sex workers.

Failure to pay off their bills would result in beatings, or in severe cases, stabbings. They basically controlled all aspects of the daily existence within the prison, and they were brutal in maintaining their hold on power.

#### 15) Interference With Access to Legal Counsel, Legal and Personal Correspondence, and News

Again, FIDH reported similar conditions to those I experienced at BRP:

"Inmates have reported unreasonable restrictions placed on visits and correspondence with family and friends." FIDH Report at 4.

"Prison officers monitor all the conversations at both prisons." *Ibid.*

At the BRP personal and legal visits take place in a long series of rooms, with about 6 visitors per room on the other side of wire glass and bars. Communication is over phones that the prison unabashedly informs prisoners that Central Control in the prison monitors and records.

When I tried to hand in legal mail to be sent, the English-speaking and English-literate inmate in charge of mail would read it and then consult with a guard, who would refuse to accept it and usually rip it up. My attorney sent me numerous communications that were never received. My common-law wife sent me weekly letters for the first eight months, until she discovered they weren't getting through, and my sisters each sent several to me. In the more than two and a half years that I was in the BRP, I never received any mail whatsoever.

"One former prisoner commented, 'When I didn't have money, I wasn't allowed to write that, I had to write something good like 'I'm doing fine' because the letters would be censored by the officers.' Another former prisoner said, 'You have to use polite language in the letters you send to people outside prison and if you don't the officers will call you in and hit you because they will examine your letters'." *Ibid*.

One of the "trusty" inmates who also worked mail suggested that the reason I'd never get any mail in our out was because the guards were scared to beat a white, English-speaking Westerner, so they took out their frustrations at that in other ways. Of the dozens of letters that I sent out, only one was ever delivered, and that was after some six weeks of delay.

No phone calls were allowed at all at the BRP.

At attorney visits, I was not allowed to bring any papers or notes at all to the visiting area. I was strip searched before each attorney visit twice. These "examinations" took place when I left sub-prison 8 before walking the 1/2 km or so to the visiting area, and again before I entered the visit area to meet with my attorney. My attorney was not allowed to give me any papers concerning my case.

On my court appearance in February 2016 where the extradition documents were presented, I was given a stack of copies of the documents from America. All of them were seized from me and destroyed a couple of hours later when I returned to the BRP.

During attorney visits there was always a guard that spoke English sitting at a desk on the attorney's side of the glass. Consultations could not begin until another guard who spoke English came and stood directly behind my seat at the phone. He would slap me if I talked about conditions at the prison. If either of the guards did not like what my attorney and I were saying, the guards would end the meeting and have me dragged out of the visiting room. This happened several times.

"[F]ormer prisoners at the CWCI and the BRP reported that after the coup [in 2014] the Department of Corrections banned newspapers and watching the news on TV, as well as books in the dormitories." The UN Standard Minimum Rules for the Treatment of Prisoners state, "Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by letters or by any similar means as authorized or controlled by the prison administration."

The news blackout was very effective, virtually no information about what was going on in Thailand, or the rest of the world filtered through to us. As an example, after I got to the MDC in New York, there was an announcement one day that there would be a special report that evening on the anniversary of the massacre in Las Vegas. I turned to some men at the table, and asked, rather surprised, "What's this about a massacre in Las Vegas?" I had heard nothing about it prior to that, and was aghast when I learned the details of the shootings, which the special on TV that night showed leaders from around the world expressing their sadness and expressing condolences.